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VOLKSWAGEN GROUP OF AMERICA, INC.

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

ROSAURA DERAS, ALEXANDER  
SANTIAGO and MARIA ELENA  
SANTIAGO, individually and on behalf of  
a class of similarly situated individuals,

Plaintiffs,

vs.

VOLKSWAGEN GROUP OF AMERICA,  
INC.,

Defendant.

Case No. 3:17-cv-05452 - JST

**VOLKSWAGEN GROUP OF AMERICA,  
INC.'S REQUEST FOR JUDICIAL NOTICE  
IN SUPPORT OF ITS REPLY  
MEMORANDUM OF LAW**

Date: November 1, 2018

Time: 2:00 p.m.

Courtroom: 9

Judge: Hon. Jon S. Tigar

Pursuant to Federal Rule of Evidence 201, Defendant Volkswagen Group of America, Inc. (“VWGoA”) requests that the court take judicial notice of the following documents:

(1) Volkswagen Group of America, Inc.’s Recall Report 14V-658 (involving the 2013-2015 Volkswagen Beetle), attached hereto as Exhibit A, which is part of the National Highway Traffic Safety Administration’s (“NHTSA”) file and is publicly accessible on the NHTSA website ([www.nhtsa.gov/recall](http://www.nhtsa.gov/recall)).

(2) Volkswagen Group of America, Inc.’s Notification of Voluntary Recall 2012 Model Year Audi Q5 Front Sunroof Glass Panel, attached hereto as Exhibit B, which is part of NHTSA’s file and is publicly accessible on the NHTSA website ([www.nhtsa.gov/recall](http://www.nhtsa.gov/recall)).

(3) Volkswagen Group of America, Inc.’s Notification of Voluntary Recall 2013-2014 Model Year Audi A8 and S8 Equipped with Standard Sunroof, attached hereto as Exhibit C, which is part of NHTSA’s file and is publicly accessible on the NHTSA website ([www.nhtsa.gov/recall](http://www.nhtsa.gov/recall)).

In ruling on a Rule 12(b)(6) motion, “courts must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.” *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007); *Skilstaf, Inc. v. CVS Caremark Corp.*, 669 F.3d 1005, 1016 (9th Cir. 2012).

Judicial notice of Exhibits A-C is proper because “appropriate materials for judicial notice include[] ‘records and reports of administrative bodies.’” *Long v. Graco Children Prods.*, 2013 U.S. Dist. LEXIS 121227, \*5 N.2 (N.D. Cal. Aug. 26, 2013) (taking judicial notice of defendant “Graco’s response to the NHTSA’s preliminary evaluation into consumer complaints” because the NHTSA is an administrative body). Indeed, in ruling on VWGoA’s motion to dismiss the First Amended Complaint, this Court granted judicial notice of the attached Exhibit A, which is part of NHTSA’s file relating to the 2013-2015 recall of Volkswagen Beetle vehicles. Dkt. No 47, May 17, 2018, at 9 n.6 (Tigar, J.). As in the First Amended Complaint, the 2013-2015 Beetle recall is referenced several times in the Second Amended Complaint. SAC ¶¶ 10, 38, 48.

Similarly, Exhibit B is part of NHTSA’s file relating to the 2012 recall of Audi Q5

1 vehicles, and Exhibit C is part of NHTSA's file relating to the 2013-2014 recall of Audi A8 and  
2 S8 vehicles, both of which are referenced in the Second Amended Complaint. SAC ¶¶ 34, 38.  
3 As such, Exhibits A-C may be considered by the Court in deciding VWGoA's Rule 12 motion.  
4 See Dkt. No 47, May 17, 2018, at 9 n.6 (Tigar, J.).

5 VWGoA refers to, and respectfully requests the Court to consider these Exhibits, in  
6 response to Plaintiffs' opposition insofar as it purports to rely upon a case involving vastly  
7 different recalls.

8  
9 Respectfully Submitted,

10 DATED: September 13, 2018

HERZFELD & RUBIN P.C.

11  
12 By: /s/ Michael B. Gallub (Pro Hac Vice)  
13 Michael B. Gallub (Pro Hac Vice)  
14 Attorneys for Defendant  
VOLKSWAGEN GROUP OF  
AMERICA, INC.